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SUBJECT: NEPAL: UPDATE OF CHILD LABOR INFORMATION 2007

REF: STATE 158223

Introduction

11. As requested by Reftel, Post is providing current information on child labor, especially its worst forms, as well as on efforts by the Government of Nepal (GON) to address the problem. Emboff collected information from the Ministry of Labor and Transport (MOLT), the Ministry for Women, Children and Social Welfare (MWCSW), the National Planning Commission, International Labor Organization, UNICEF and several local NGOs working in Nepal to combat the worst forms of child labor.

Section A - Laws and Regulations

12. Nepal has a number of laws governing child labor including: the Labor Act (1990), the Children's Act (1992), the Forced Labor Act or "Kamaya" Labor Prohibition Act (2000), the Child Labor Regulation and Prohibition Act (2000) and the Human Trafficking Control Act (2007). In addition to these laws both the Interim Constitution and the Comprehensive Peace Accord contain provisions prohibiting certain forms of child labor and calling for the protection of children. While the legislation in Nepal governing child labor is extensive, many of the laws contain conflicting provisions and there is very little enforcement.

13. The Child Labor Prohibition and Regulation Act of 2000 (CLPA), which entered into force in November of 2004, is currently the most comprehensive law governing child labor. The CLPA governs the minimum age for employment and regulates the terms and conditions for working children. A child is defined as a person who has not yet reached 16 years of age but sets 14 as the minimum age for employment. Children between the ages of 14 and 16 can be employed for a maximum of 36 hours a week but the CLPA requires that the employer first obtain consent from the local labor office (or a person identified by the labor office) and a guardian, as well as acquire medical certification of the child's fitness to perform the work. The work must not take place for more than six hours a day, thirty-six hours a week, or between the times of 6 P.M. to 6 A.M. The employer must grant half an hour's rest after 3 hours of work. The CLPA prohibits the employment of children (e.g. anyone under 16) in "any risky job or enterprise" and includes a schedule defining risky

jobs. The schedule is very broad and includes almost every possible form of employment from tourism to transport, manufacturing and mining. The CLPA also prohibits the employment of children against their will.

¶4. The Comprehensive Peace Accord signed in 2006 prohibits violence against women and children, the sexual exploitation and harassment of women and children and the conscription of children (under the age of 18) into the armed forces. In 2006 Nepal also ratified the Optional Protocol of the Children's Rights Convention (CRC) which proscribes the involvement of children in armed conflicts. Article 22 of the Interim Constitution, signed in January 2007, sets forth a list of child rights and prohibits the employment of children in hazardous work and their conscription into the armed forces. Article 29 prohibits human trafficking, slavery, serfdom and forced labor in any form.

¶5. In July 2007 the Government of Nepal (GON) enacted the Human Trafficking Control Act. This law states that a child is a person who has not attained the age of 18 years. It prohibits the sale and trafficking of children under 18 for labor or sexual exploitation. In addition, different sectoral laws including the Country Code of 1963, the Begging Prohibition Act of 1992, the Public Offense and Punishment Act of 1970, the Local Self Governance Act of 1998, the Army Act and the Narcotics Drugs Control Act of 1959 all have provision that bar the use of children in illegal activities.

¶6. In 2002 Nepal ratified Convention 182 and there are several documents which identify hazardous employment or the worst forms of child labor. The CLPA contains a schedule entitled "Risky Jobs or Enterprises." However, the

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overbroadness of this schedule makes is impractical and unenforceable. Over 61 sectors are identified, including many areas that would not necessarily be defined as hazardous, such as tourism, golf and washing for example.

¶7. The Ministry for Women, Children and Social Welfare has drafted a new law titled the "Child Protection Act." This law is based on the human rights framework and closely follows the Convention of the Rights of the Child. If passed the Act would correct many of the inconsistencies in existing legislation and authorize compulsory education and free health care. The MWCSW hopes that it will be submitted for consideration during the next parliamentary session.

Section - Regulations, Implementation and Enforcement

¶8. Government agencies that enforce child labor laws have a number of legal remedies available to them. The CLPA contains provisions for criminal penalties and civil fines. However, these provisions have never been enforced and are largely inadequate to punish and deter violations. The most stringent punishment provided is imprisonment for a term not exceeding one year. In contrast, the new 2007 Human Trafficking Control Act provides for life imprisonment, but it is too early to tell if this law can and will be enforced. In the absence of a strong government and functional security force, it is not surprising that enforcement of these laws is negligible. In addition the Ministries lack the necessary resources to truly combat the problem.

¶9. The GON has devoted very limited resources to investigating child labor violations. The Ministry of Labor and Transportation employees only 10 labor inspectors for the entire country and these inspectors are responsible for all labor issues - not just child labor violations. Women development officers in each district are tasked with monitoring violation of children's rights but have no authority for inspection or prosecution. In general, child labor investigations are only undertaken when civil society

demands them. In some communities social pressure has compelled employers to offer their child domestic laborers the opportunity to attend school.

¶10. In 2007 the MOLT provided five training programs for labor inspectors and their staff on issues related to labor relations and skill development. While child labor issues were included none of the training programs were specifically focused on child labor.

Section C - Social Programs

¶11. The GON has supported a limited number of initiatives to prevent the worst forms of child labor. In 2007 the MWCSW began a rehabilitation program for trafficking victims. The program will provide shelter and services to one hundred girls in three communities in 2007/2008. The "Child Development and Rehabilitation Fund" offers informal education and day care services to approximately 400 children of workers in the carpet manufacturing sector. The GON also supports a number of shelters for homeless children. In 2007 the MOLT sponsored a radio and TV campaign to increase public awareness and this program will continue, at least, through July of 2008. The GON is supporting children effected by the conflict through a special cash transfer program under which each child receives 1200 NRPs a month. The GON supports a number of other programs that either directly or indirectly impact child labor, but relies heavily on the donor community for financial support.

Section D - Comprehensive Policy to Eliminate Worst Forms

¶12. The GON is addressing child labor in the context of a larger child protection framework. Children are believed to be at risk because of inadequate health and education and endemic poverty. The GON is attempting to address these

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issues in different sectors through the joint implementation of plans developed to address labor, education, health, and the protection of women and children. In 2004 the GON adopted a comprehensive policy to eliminate the worst forms of child labor by 2009 and all forms of child labor by 2014. In 2005 a Labor and Employment Policy was developed with a separate section on child labor with the elimination of child labor as an objective. The MWCSW also has a ten-year National Plan of Action for Children. These policies are incorporated into the GON's National Plans.

¶13. The National Planning Commission has prepared a new three year interim plan which will run from 2007/2008 through 2010/2011. The plan includes a commitment to implement the National Master Plan on Child Labor. Child labor is seen as a cross-cutting issue that is best addressed by increasing social sector investment in health and education and poverty alleviation programs. Funds allocated for the protection of children will be used to provide assistance to conflict-affected children and children from marginalized communities, as well as, additional spending on education and health services.

¶14. Education is not compulsory and is free by law only up to grade five. However, in practice, education even up to grade five is not free and there are a number of fees, including tuition, books, uniforms, etc. The Interim Constitution states that education is free up to grade ten but the GON has not passed the necessary implementing legislation and in practice almost all schools charge fees. The GON has committed to achieving universal primary education by the year 2015. The Government's "Education for All" (EFA) program, supported by the World Bank, is designed to ensure that all school-age children receive an education. Under

this program the GON has started several initiatives to increase school enrollment by providing free books, tuition free primary education, scholarships, cooking oil and mid-day meals.

Section E - Progress

¶15. The most recent studies that exist on age and gender of working children, disaggregated by industry/work activity/good were conducted in Nepal by the ILO in 2000 and ¶2001. According to these studies, the largest number of child laborers were found in domestic service (55,655) followed by child porters (46,029) and child bonded laborers (17,152). However, the situation has changed in the last six years and reports from NGO workers in this field indicate that this data is no longer accurate. As described below the number of child laborers in the formal sector is decreasing while the number in the informal sector is increasing.

¶16. Attitudes regarding domestic workers have changed and there is increasing social pressure to send children to school. Child labor in the formal manufacturing and industrial sector is decreasing and there are fewer and fewer children in the factories. However, child labor in the informal sector is growing. Manufacturers are increasingly outsourcing labor to children in their homes in order to evade detection. Children in the villages are cleaning the wool, embroidering the garments and packing the goods, etc., outside of the reach of the few labor inspectors. Many children displaced during the conflict ended up in urban centers and there has been a dramatic increase in children in the entertainment sector, including cabin restaurants, massage parlors and prostitution. In addition, children are increasingly found in the transportation sector and mechanical workshops and children are still trafficked to India for agriculture, circus and sex work. According to the MOLT over 12,000 girls alone are trafficked to India each year. Although the GON officially abolished the Kamaya (bonded labor) system in 2000, a large number of Kamaya children remain enslaved and continue to work as bonded laborers.

¶17. The Communist Party of Nepal-Maoist (CPN-M) recruited a large number of children into its ranks, particularly in November 2006. Many of these children are currently living

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in one of the seven cantonment camps set up to accommodate the Maoist People's Liberation Army after the Comprehensive Peace Agreement was signed in November 2006. The United Nations is the process of finishing its verification of the combatants and has found a large number of children under the age of 18 inside the camps. Although the verification process has faced considerable problems, including lack of birth registrations, it is generally believed that there are several thousand children inside the camps. In addition, the office of the High Commissioner for Human Rights (OHCHR) in Nepal has reported that minors attempting to leave the cantonments have been forced to return by CPN-M cadres. OHCHR also reported that the CPN-M cadres have threatened human rights defenders and others working to reintegrate into society minors formerly associated with the CPN-M.
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